

REMARKS/ARGUMENTS

Reconsideration of this Application and entry of this Amendment is respectfully requested.

Claims 13-22 are pending in this application. Claims 1-12 have been previously canceled. Claims 21 and 22 are presently canceled. Claim 19 has been amended as discussed below.

By the amendments, Applicants do not acquiesce to the propriety of any of the Examiner's rejections and do not disclaim any subject matter to which Applicants are entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997).

Rejections under 35 USC §112

Claim 17 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 has been amended to recite, in part, "said injectable depot releases said composition over a period of time selected from one month, three months and six months." Support for the amendment to claim 17 can be found in paragraphs 0019 and 0034 of the specification. No new matter has been introduced as a result of this claim amendment.

Rejections under 35 USC §103

Claims 13-16 and 17-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over Goodman & Gilman's: *The Pharmacological Basis of Therapeutics* (2001, pages 7-8 and 1031-1033). Applicants respectfully traverse.

Goodman & Gilman's teaches several combinations of drugs that can be administered intravenously (i.v.) for chemotherapy-induced emesis (Table 38-4). Goodman & Gilman's does not teach or suggest a composition comprising the four components recited in instant claim 13. Furthermore, Goodman & Gilman's does not

teach a controlled release composition comprising the specific four components recited in instant claim 13. Additionally, Goodman & Gilman's does not disclose an inhalable composition comprising the specific four components recited in instant claim 19. Goodman & Gilman's discloses certain combinations of drugs useful for treating emesis (but not the combination recited in claims 13 and 19) and certain delivery routes are available to deliver drugs. However, Goodman & Gilman's does not teach or suggest the claimed compositions and administration routes such that a person of ordinary skill in the art would achieve the presently claimed compositions with a reasonable expectation of predictable results. Therefore, the claimed compositions are patentable over Goodman & Gilman's. Applicants respectfully request the Examiner withdraw this rejection in light of the arguments above.

Double Patenting

Claims 13-22 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,673,792.

A terminal disclaimer in compliance with 37 CFR §1.321(c) is hereby submitted to overcome the nonstatutory double patenting rejection over claims 1-11 of U.S. Patent No. 6,673,792.

Conclusion

In light of the amendments and arguments presented supra, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. §1.17, or credit any overpayment, to Deposit Account No. 50-3207. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (949) 253-0900.

Respectfully submitted,

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/Michelle S. Glasky/
Michelle S. Glasky, Ph.D.
Registration No. 54124
Customer No. 45,200

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS, LLP
1900 Main Street, Suite 600
Irvine, California 92614-7319
Telephone: (949) 253-0900
Facsimile: (949) 253-0902